STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
SOUTHCENTRAL REGION LAND OFFICE

FINAL FINDING AND DECISION
AQUATIC FARMSITE LEASE RENEWAL

APPLICANT: GARY SIEMS AND DEBBIE SIEMS
SEIMS SEA FARMS also known as "ALASKA OYSTER COMPANY"
ADL # 225561

LOCATION: PETERSON BAY / KACHEMAK BAY

This final finding and decision is intended to complement and update the preliminary finding and decision dated October 1, 2008

The applicant is requesting renewal of their existing aquatic farm site lease. The applicant currently holds a lease for 0.99 acres, encompassing an area measuring 135 ft. x 300 ft. for shellfish grow-out and an area measuring 30 ft. x 50 ft. for shellfish hardening plus a 30 ft. x 50 ft. floating work-raft. The applicant will add sea plant harvest to their operation within their current footprint. The farm site is located off the eastern shore of Peterson Bay and the western most point of Moss Island within Peterson Bay.

Access to the site is only accessible by boat or floatplane. A location map is attached to this decision.

AUTHORITY: AS 38.05.035; AS 38.05.070; AS 38.05.075; AS 38.05.083; AS 38.05.127; AS 38.05.128; 11 AAC 63.020

This decision addresses and is based on those issues under the authority of the Department of Natural Resources (DNR) under Title 38. While other issues may be addressed that are not within the scope of DNR's responsibilities, this decision's purpose is to determine whether or not to renew an existing tideland lease and does not make any determinations whatsoever on the issuance of other agency authorizations that are necessary for aquatic farming activities. Information included in the original preliminary decision document may not be included in this document if conditions have not been altered. Original preliminary decisions for this lease can be obtained by contacting the aquatic farm program manager for the DNR in Anchorage.

ADMINISTRATIVE RECORD: The administrative record for the application is file number ADL 225551.

LOCATION:

USGS MAP COVERAGE: Seldovia C -4

NAUTICAL CHART: 16645

LEGAL DESCRIPTION: Township 7 South, Range 12 West, Seward Meridian,
And more specifically described as:

Section 14: NE ½ , within Peterson Bay, encompassing an area measuring 135 ft. x 300 ft. for shellfish grow-out, and
Section 14: SE ¼ , within Peterson Bay encompassing an area measuring 30 ft. x 50 ft. for shellfish hardening, and
Section 14: SE ¼ , within Peterson Bay a work-raft measuring 30 ft. x 50 ft.
According to the drawings attached to this document and labeled as Attachment B,

containing approximately 0.99 acres, more or less.

GEOGRAPHIC: The farm site is located on state-owned tide and submerged lands approximately 5.0 miles east of Homer in Peterson Bay, Kachemak Bay.

POLITICAL INFORMATION:

BOROUGH/MUNICIPALITY: This application is inside the Kenai Peninsula Borough.

COASTAL DISTRICT: The application inside the Kenai Peninsula Borough Coastal District and is subject to their coastal district management plan and enforceable policies

REGIONAL CORPORATION: Cook Inlet Region, Incorporated and the Seldovia Village Tribe.

FISH AND GAME ADVISORY COMMITTEES: Homer and Seldovia Fish and Game Advisory Committees.

TITLE:

ACQUISITION AUTHORITY: Submerged Lands Act of 1953. (P.L. 31, 83rd Congress, First Session; 67 Stat. 29); Equal Footing Doctrine; Section 1 of the Alaska Statehood Act.

PLANNING AND CLASSIFICATION:

LAND MANAGEMENT PLAN: Kenai Area Plan (KAP), Region 9, South Side Kachemak Bay and Chugach Islands, Unit 535, Peterson Bay tidelands, adopted January 7, 2000.

SURFACE CLASSIFICATION: The KAP classifies state owned tidelands in this area as Habitat and Public Recreation and Tourism-Dispersed Use. These classifications allow aquatic farming activities.

SURFACE MINERAL ORDERS: The proposed site is open to mineral entry.

ALASKA COASTAL MANAGEMENT PROGRAM: The proposed aquatic farm was found consistent with the Alaska Coastal Management Program (ACMP) on February 24, 1992, State I.D. No. AK 910606-20A. The applicant's request to renew and amend his lease does not require another consistency review.

PUBLIC/AGENCY NOTICE AND COMMENTS: Public notice of the proposal was sent to various newspapers, post offices, agencies, boroughs/cities, native corporations, , Fish and Game Advisory committees, etc. The public comment period began on October 13, 2008 and ended on November 14, 2008. **No public comments were received**.

ENVIRONMENTAL RISK ASSESSMENT: The applicant has indicated that no on-site use, storage, transport, disposal, or otherwise, of any petroleum products will be used during the course of the proposed activities.

BONDING AND INSURANCE:

BONDING: Bonding, or another form of security, is required under AS 38.05.083 and 11 AAC 63.080. The bond must cover the costs of site cleanup and restoration, any associated cleanup

costs after termination of the lease, including any unpaid rentals or other obligations accruing until site restoration is complete. The regulations require the minimum security amount of $2,500 (or $1,250 with an association bond) for an aquatic farm lease. Factors such as location and amount of improvements at the site are taken into consideration when the bond amount is determined.

INSURANCE: At this time the DNR does not require this type of activity to have general liability insurance. General liability insurance may be required in the future depending on the aquatic farming operations and the procedures of the department at the time changes are made to the lease or a renewal lease is issued. The lessee is responsible for acquiring other types of insurance, such as Workman's Compensation Insurance that may be required under other local/state/federal laws.

TRADITIONAL USE FINDING: The aquatic farm has not had an effect on traditional and/or existing uses of the area, such as commercial and sport fishing, subsistence activities, boat travel, and recreation. Through agency and public input, more traditional and existing use information may surface. If such information becomes available, any potential and/or existing conflicts will be addressed in the final best interest finding.

KENAI AREA PLAN INFORMATION SPECIFIC TO THIS PROPOSAL: This proposal lies within Region 9, South Side Kachemak Bay and Chugach Islands, Unit 535, Peterson Bay, adopted January 7, 2000. The designations are habitat and recreation and tourism-dispersed use. The existence of the farm site over the last 10 years has not caused impacts to the habitat or recreation and tourism values in Peterson Bay. It is likely the aquatic farm sites have enhanced tourism through the curiosity of the farms.

UPLAND OWNER/MANAGEMENT INTENT: The uplands adjacent to the proposed amendment are privately owned. To date, there have been no conflicts between upland owners and the existing aquatic farm.

CONSIDERATIONS: The following criteria, set out in 11 AAC 63.050(b), has been considered and represents what is known at this time:

Land Management: There are no known land management policies or designations, other than those in the Alaska Coastal Management Program, the Kenai Area Plan, and the Management Plan for Kachemak Bay State Critical Habitat Area (ADFG, 1993) that may impact this proposal. Measures taken to mitigate impacts on the resources identified in the above-mentioned plans are listed below.

Pending/Existing Uses:

1. There are no known pending use conflicts or potential negative impacts to nearby communities or residential land due to the placement of this farm at the proposed location. Farm sites in the area have positively impacted the city of Homer by providing additional employment and at times have provided local restaurants with fresh oysters.

2. The aquatic farm has had no disruption on traditional and existing uses of the site for use as an anchorage, commercial and sport fishing, recreation, and tourism.

3. There are no historic and cultural resources known to exist in the area.

4. There are no commercial or industrial facilities known to exist in the area.

Public Access: Public access has been and will be protected in accordance with 11 AAC 63.050(b)(6) and 11 AAC 53 and will be addressed in any resultant lease agreement.

Public Trust Doctrine: Any resultant lease agreement is subject to the principles of the Public Trust Doctrine in order to protect the public's right to use navigable waters and the land beneath them for navigation, commerce, fishing, and other purposes.

Mitigation Measures: In addition to the mitigation measures identified above under Pending/Existing Uses, paragraph 2, any resultant lease renewal may include additional stipulations necessary to mitigate conflicts identified during the public/agency comment period

Social, Economic, and Environmental Concerns: There are no known significant social, economic or environmental effects from the existing lease.

Surface Area: The proposal does not encumber encumber more than a third of the surface area of a bay, bight, or cove in accordance with 11 AAC 63.050(c).

This aquatic farm has provided opportunities to increase income and diversify the state's economy by utilizing state tide and submerged lands for this purpose. The advantage of renewing this lease on state owned tide and submerged lands is the continued employment opportunities as well as any secondary jobs created or increased from businesses involved in marketing, transport or sale of the farmed products.

After 10-years of successful operation of this site there seems to be no obvious disadvantages of renewing this activity on state owned tide and submerged lands. The public should be aware that access through the site, as well as access to any of the common property resources not being cultured at the site are public uses that remain intact. Therefore, and as mentioned above, any resultant lease would stipulate the requirement that signs be posted informing the public of their rights at the aquatic farmsite.

FINAL FINDING AND DECISION:

The Southcentral Regional Land Office of the Division of Mining, Land and Water recommends the renewal of a 0.99 acre, 10-year aquatic farm site lease in accordance with 11 AAC 63.050(b), subject to the following condition and stipulations, which will be included in the lease agreement:

Lease compensation: An administrative lease fee schedule for aquatic farm sites has been approved by the Division of Mining, Land and Water effective August 1, 2007 through July 31, 2009 under Appraisal Report 2522-9. The lease fee schedule is subject to review every two years. The annual rent for the proposal based on a 0.99-acre farm site, is **$450.00**. (The annual fee is calculated at $450 for the first acre, or fraction thereof, plus $125 for each additional acre, or fraction thereof.) The lease is subject to review of the annual rent every 5 years. In other words, should the fee be increased during the term of a lease, the lease will be amended at five-year intervals for fee adjustment.

In addition to the stipulations listed within the lease document, the following stipulations will be incorporated in the lease as Attachment A. The Regional Manager reserves the right to modify the following stipulations or include additional stipulations as necessary.

1. A lessee shall operate so as to cause no significant damage to land, public trust resources, and public uses of public trust resources.

2. A lessee shall obtain and remain in compliance with all other federal, state, and local authorizations necessary for lawful operations.

3. A proposed amendment to the lease development plan must be submitted to the department for approval before a change in development occurs, and must be accompanied by the amendment fee required by 11 AAC 05.010. However, under this paragraph:

   (A) the following changes do not require an amendment of the lease development plan nor do they constitute a significant modification requiring a new determination of consistency with the Alaska Coastal Management Program:

      (i) any change in the species or number of shellfish or aquatic plants being raised if the change is permitted by the Department of Fish and Game;

      (ii) a change in the number or type of rearing structures authorized within the lease boundaries, if the change does not increase obstructions to navigation or to other public use;

   (B) the department will not authorize a proposed amendment to the lease development plan for a "change of use"; for the purpose of this subparagraph and AS 38.05.083(d), "change of use" means a change from the raising of shellfish and aquatic plants to any other use; and

   (C) the approval of an amendment of an aquatic farm site lease does not relieve the lessee of the obligation to obtain other necessary authorizations.

4. A lessee may use an aquatic farm site only for the purposes authorized by the lease, and the state reserves all other interests in the site. The rights granted by the lease must be exercised in a manner that does not unreasonably interfere with the rights of the state or of its permittees, lessees, or grantees, consistent with the principle of reasonable concurrent uses as set out in art. VIII, sec. 8, of the Alaska Constitution. A lessee shall pay for any damages that are payable by reason of the lessee's failure to comply with the requirements of this paragraph.

5. A lessee shall comply with the approved development plan. Failure to comply with the commercial-use requirement set out in 11 AAC 63.030(b) is a default and cause for termination, unless the lessee shows to the Regional Manager's satisfaction that the failure is due to circumstances beyond the lessee's reasonable ability to foresee or control.

   The lessee shall report annually to the department, no later than January 31, on sales during the previous year of shellfish and aquatic plants raised on the lease site, not including sales of commercially harvested wild stock that had been stored at the lease site. If the lessee provides this sales information to the Department of Fish and Game by an annual report, by copies of fish tickets, or by other means, the lessee may fulfill this paragraph's requirement for a sales report by asking the Department of Fish and Game to give a copy of the information to the department.

6. A lessee's failure to timely comply with all express or implied provisions of the lease constitutes default. If a lessee fails to cure the default or to begin and diligently continue to remedy the default within 60 days after written notice of the default and an opportunity to be heard, the Regional Manager will order suspension of site development or operations until compliance is

achieved, or will take other action that the Regional Manager finds appropriate, including termination of the lease or attachment of the site restoration security.

7. With the Regional Manager's written consent, a lease that is in good standing may be relinquished.

8. A lease that is in good standing may, with the prior written approval of the Regional Manager, be assigned. The assignee shall promptly and diligently seek to obtain all authorizations necessary for lawful operations. The assignee is subject to all provisions of the lease in the same manner as the original lessee.

9. The department reserves the right:

   (A) of reasonable access to the leasehold for purposes of inspection, including the lessee's improvements and rearing structures; when the department inspects the lessee's rearing structures, the department will not lift or handle underwater rearing structures without prior notice to the lessee; the notice to the lessee may include notice by the Department of Fish and Game in accordance with AS 16.40.150(b); and

   (B) upon 10 days' prior notice, to inspect records of the lessee necessary to verify the lessee's compliance with the lease provisions.

10. A bond, cash deposit, certificate of deposit, or other form of security acceptable to the Regional Manager at a minimum of **$2,500.00** must be posted and maintained during the life of this lease. The bond may be used to cover the cost of site cleanup and restoration and any associated cleanup costs after termination of the lease, including any unpaid rentals or other obligations accruing until site restoration is complete. The lessee is responsible for the full cost of site cleanup and restoration in the event the costs exceed the posted bond amount.

    If three or more lessees post an association bond to cover all of their leases, the minimum security amount is 50 percent of the amount individually calculated for each lease. The association must designate an agent for notification purposes. The association has the right to be notified of the termination of a lease covered by its association bond. If neither the former lessee nor the association completes the site restoration as required by AS 38.05.090, the department will use the association bond for this purpose, up to 100 percent of the amount individually calculated for that lease. The association may remove a lease in good standing from the coverage of its association bond after 60 days' notice to the department, during which time the affected lessee must make other arrangements to comply with this section. A lease that is in default or that has been terminated with site restoration still pending may not be removed from the coverage of the association bond.

11. If cultural or paleontological resources are discovered as a result of this activity, work that would disturb such resources must be stopped and the Alaska Office of History and Archaeology shall be contacted immediately at (907) 269-8721.

12. The United States Coast Guard (USCG) shall be contacted prior to placing any aquatic farm structures under this permit to determine lighting or marking requirements necessary for the protection of maritime navigation, in accordance with Title 33, Code of Federal Regulations, Part 64. Required markings of this nature are Private Aids to Navigation, and must be subject to an approved permit. The USCG may be reached at the following address and phone number:

Commander (oan), 17th Coast Guard District, P. O. Box 25517, Juneau, AK 99802-5517, telephone (907) 463-2254.

13. The lessee is required to visibly mark the corners of the site authorized under the lease (suspended and/or submerged on-bottom culture) with buoys and in accordance with U.S. Coast Guard marking requirements. If a submerged site is not in full operation, or rotational planting is utilized as for geoduck culture, additional marking is required of the corners of the area that contains improvements at any given time.

14. The lessee is required to visibly identify the leased site by writing on at least one corner buoy/marker the lessee's name, telephone number, the DNR file number (ADL number), information concerning the presence of any submerged improvements, and, for on-bottom culture only, identify the species being cultured.

15. All improvements shall be secured utilizing anchoring methods with sufficient weight and holding capability to keep them in their authorized location(s).

16. The use of adjacent uplands for activities related to the aquatic farm site, including shore ties, is not authorized under this lease without the prior written permission from the upland owner.

17. The lessee is not authorized to hold commercially harvested wild stock acquired under AS 16 (the Alaska Department of Fish and Game's commercial fisheries program) within the lease boundary.

The finding presented above has been reviewed and considered. The case file has been found to be complete and the requirements of all applicable statutes and regulations have been satisfied. It is the finding of the Regional Manager that it is in the best interest of the state to proceed with this disposal under the authority of AS 38.05.083.

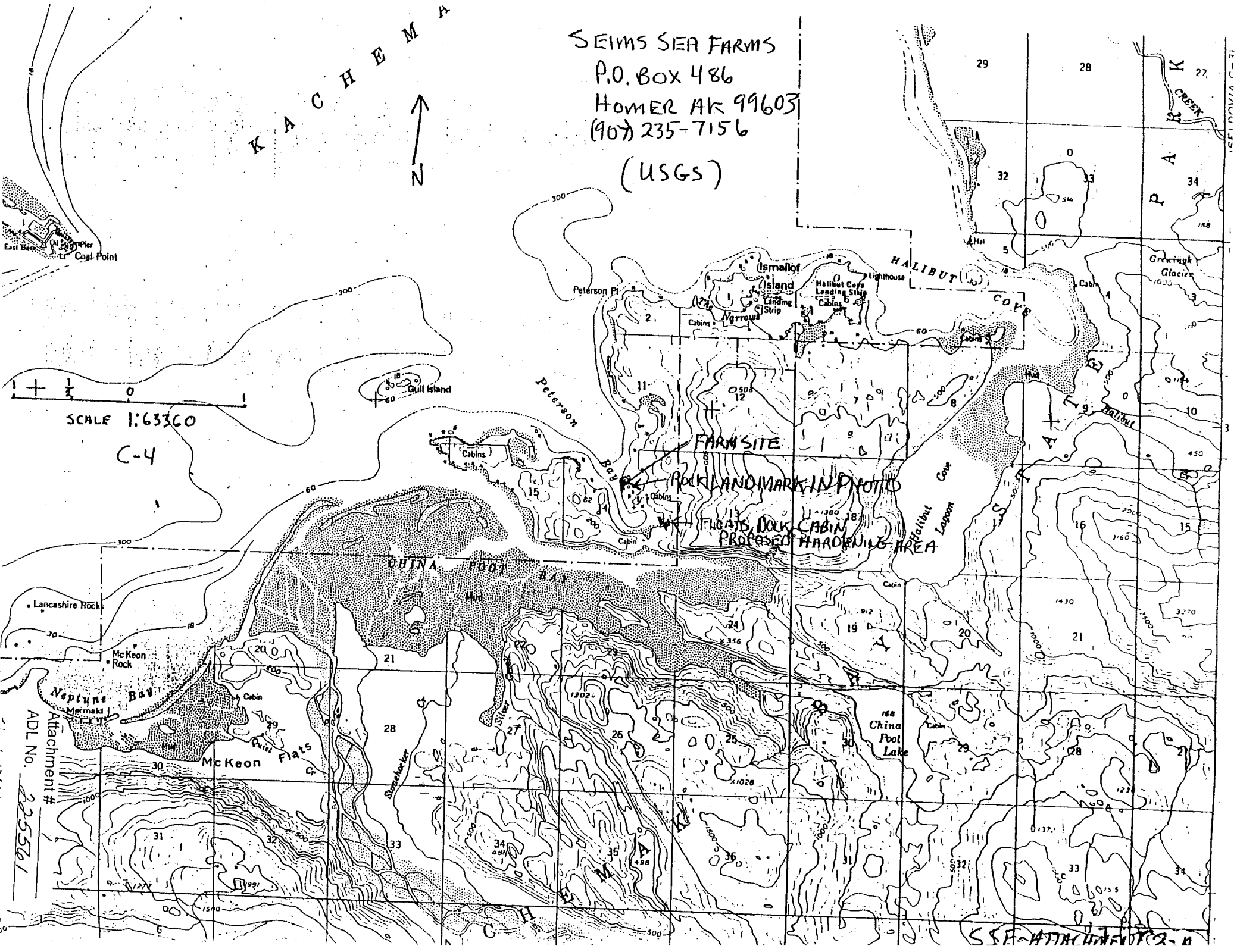
Richard Thompson

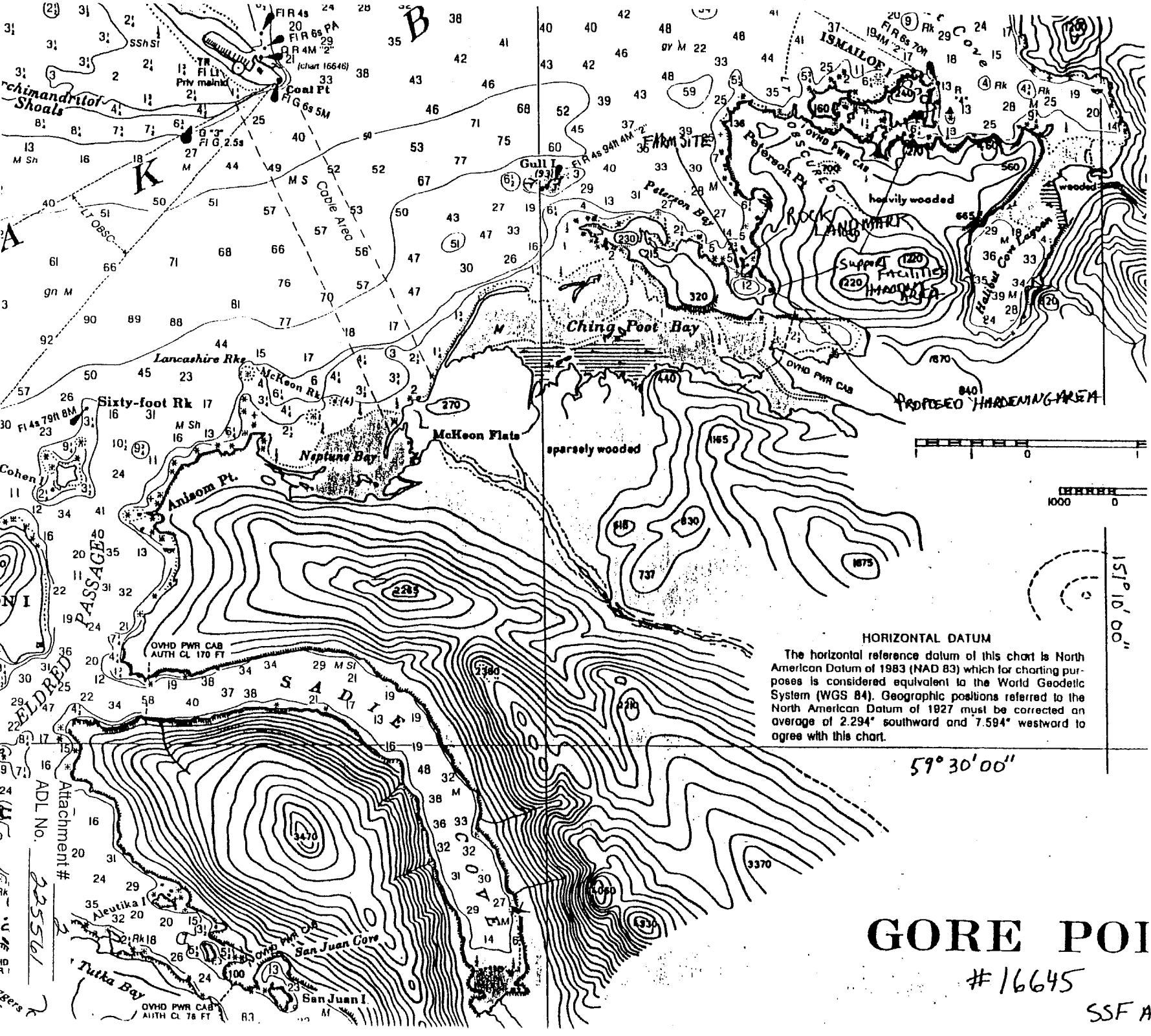
Richard B. Thompson, Regional Manager
Southcentral Regional Land Office

12/9/08
Date

APPEAL PROVISION:

A person who is affected by this decision and who provided timely written comment or public hearing testimony on this decision (preliminary component), may appeal it, in accordance with 11 AAC 02. Any appeal must be received by December 23, 2008 and may be mailed or delivered to Tom Irwin, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501-3561; faxed to 1-907-269-8918; or sent by electronic mail to dnr_appeals@dnr.state.ak.us. If no appeal is filed by this date, this decision goes into effect as a final order and decision on December 23, 2008. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 is enclosed for your information.


SEIMS SEA FARMS
P.O. BOX 486
HOMER AK 99603
(907) 235-7156
(USGS)
KACHEMAK
N
SCALE 1:63360
C-4
FARMSITE
ROCKLANDMARK IN PHOTO
FLOATS, DOCK, CABIN
PROPOSED HARDENING AREA
Peterson Bay
Peterson Pt
Gull Island
Coal Point
East Base
Ismailof Island
Landing Strip
The Narrows
Halibut Cove Landing Strip
Lighthouse
HALIBUT COVE
Halibut Cove Lagoon
CHINA POOT BAY
Lancashire Rocks
McKeon Rock
Neptune Bay
Mermaid
McKeon Flats
Quiet Cr
Silver Cr
Stonehocker Cr
China Poot Lake
Grewingk Glacier
CREEK
STATE PARK
Halibut
Cabins
Cabin
Mud
Hal
Attachment #
ADL No. 225561
SSE-ATTACHMENT 2-A



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NOAA CHART

MHHW 19.1'
MHW 17.3'
MLW 1.6'
MLLW -5.5'

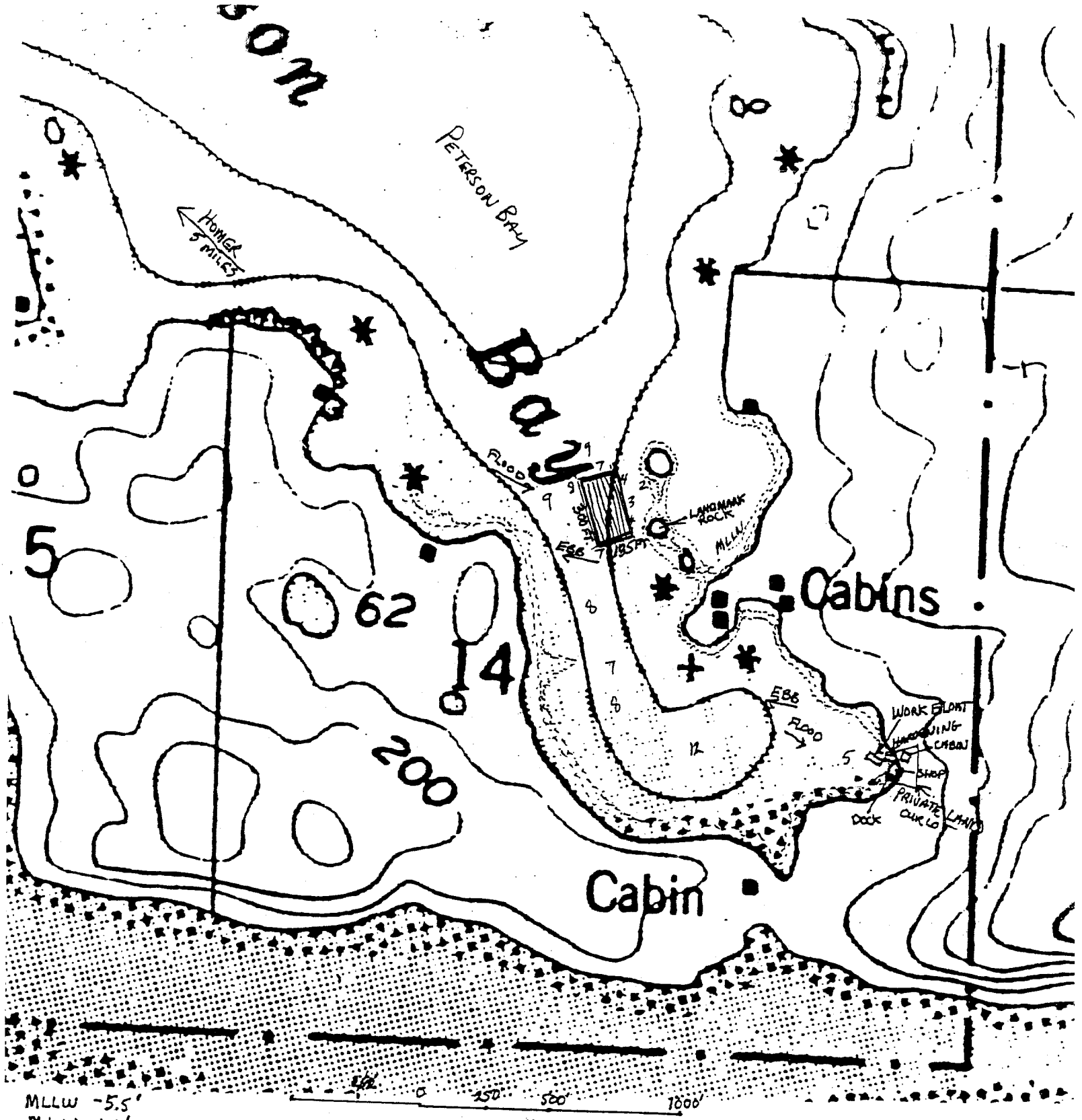
GORE POINT

#16645

SSF ATTACH. #3B

ADL No. 225561

Attachment #



MLLW -5.5'
MLW 1.6'
MHW 17.3'
MHHW 18.1'

DEPTH AT SITE AT MLLW: AVERAGE 30' (20' TO 50')

SITE PLAN

OVER VEIW

PETERSON BAY
SECTION 14 T. 7S R 12W
SEWARD MERIDIAN
KENAI PENINSULA BOROUGH

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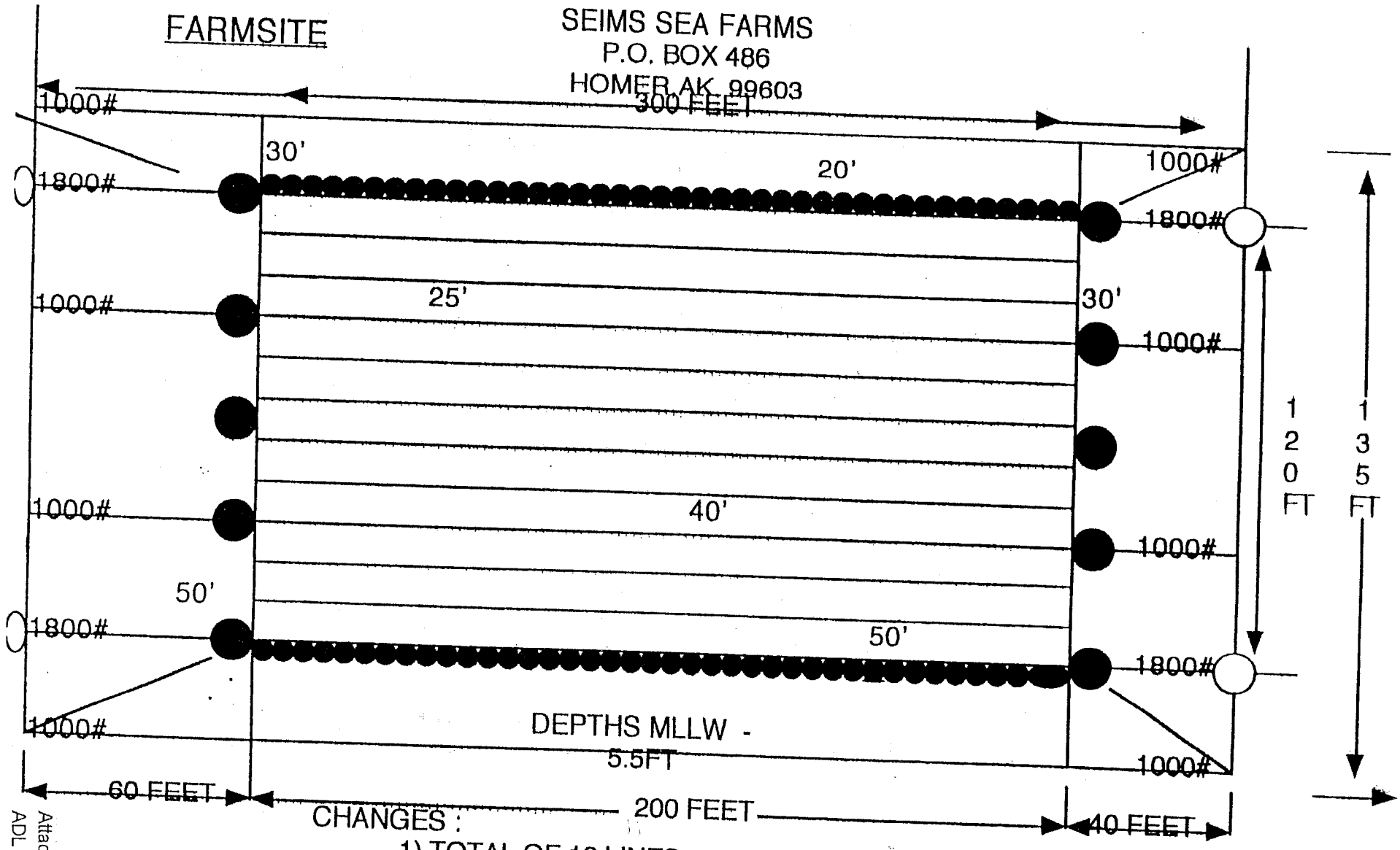
Attachment # 3
ADL No. 225561

SEIMS SEA FARMS SITE MODIFICATION 1996



CHANGES :

1) TOTAL OF 12 LINES
2) LINES EXTENDED TO 200 FEET
3) 4 -1800 POUND CEMENT ANCHORS.
4) 6- 1000 POUND INTERMEDIATE ANCHORS

SSF- ATTACHMENT # 4
ADL- 225561

Attachment # 4
ADL No. 225561

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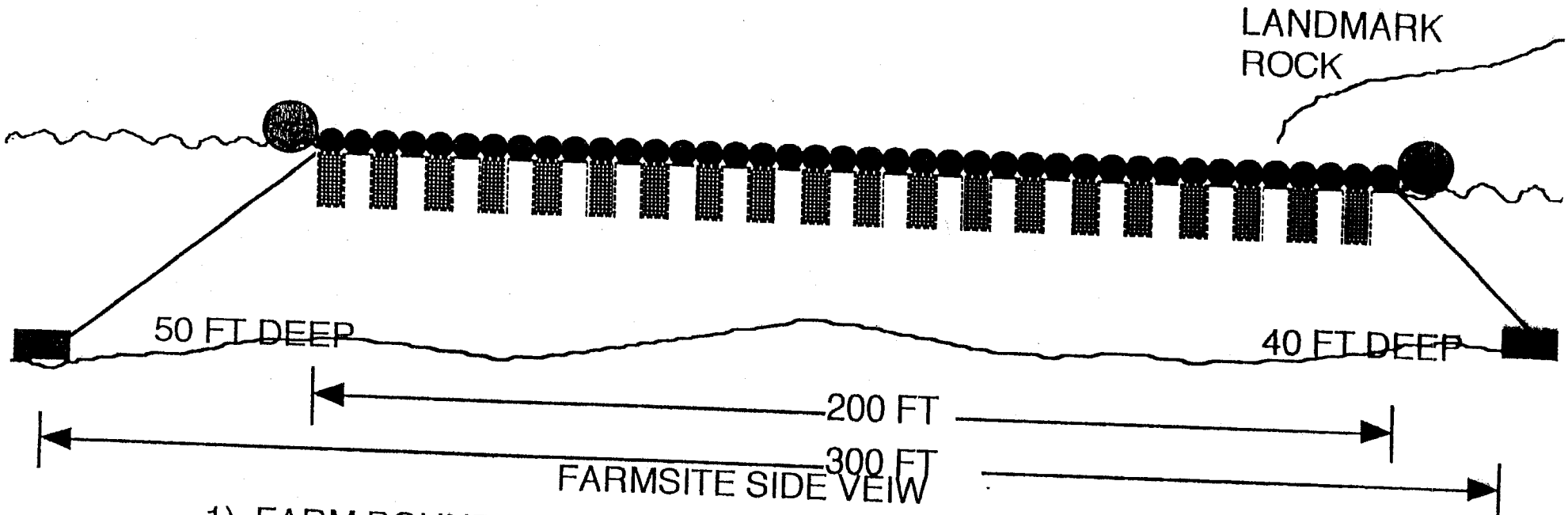

FARMSITE SIDE VEIW

1) FARM BOUNDRY 135' W X 300' L
2) LONGLINES : 12-- 200' X 1 in LINES 10' APART .
3) LANTERN NETS : 50 NETS PER LINE 1000 OYSTERS PER NET EQUALS 50,000 PER LINE.
4) MUSSEL TUBE NETS : 2 - 20' TUBES BETWEEN EVERY LANTERN NET. ONE TUBE = 100 POUNDS. (APPROX.)
5) BUOYS: ONE A - 2 BUOY FOR EVERY LANTERN.

Attachment # 5
ADL No. 225561

SSF-ATTACHMENT # 5
ADL -225561

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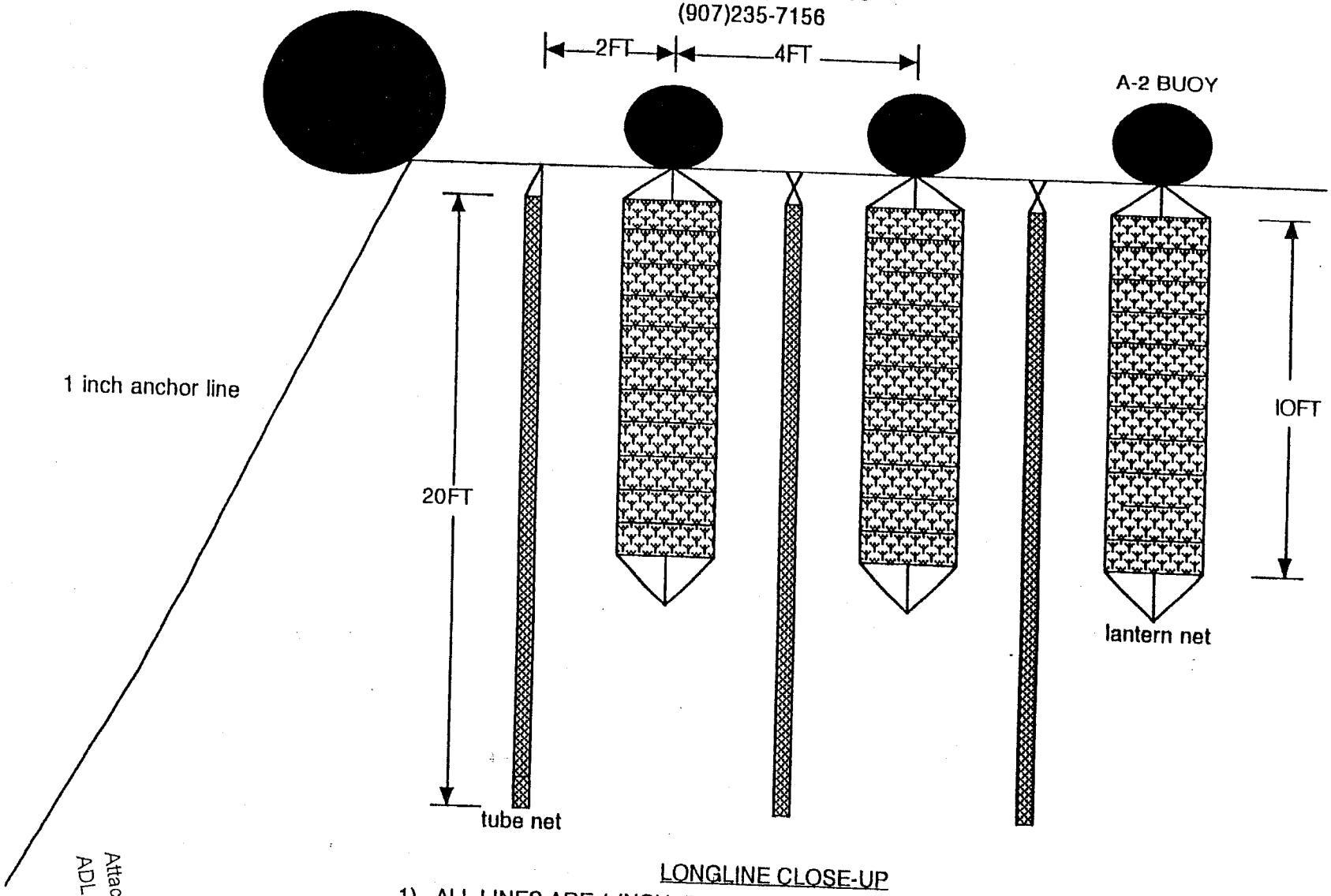
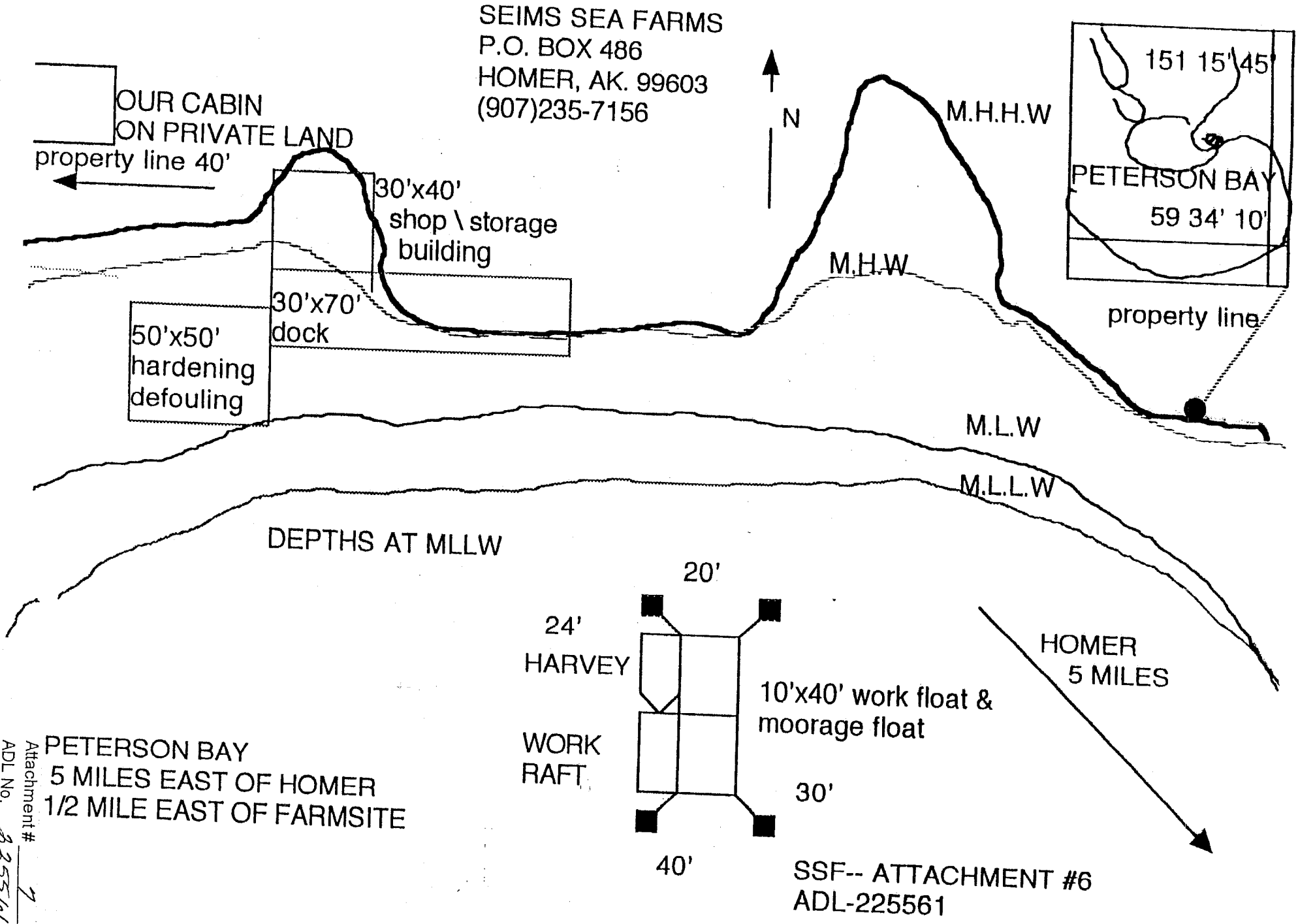


LONGLINE CLOSE-UP

1) ALL LINES ARE 1 INCH POLY.
2) TUBE NETS FOR MUSSELS ARE 1/4in X 6in X 20FT POLY NETTING.
3) LANTERN NETS FOR OYSTERS ARE 6mmX20inX10FT
4) LANTERN NETS ARE SPACED EVERY 4 FEET WITH A MUSSEL TUBE NET BETWEEN EACH .ONE.
5) THERE IS AN A-2 BUOY ABOVE EACH LANTERN NET. AND AN A-6 BUOY AT THE ENDS OF EVERY THIRD OR FORTH LINE.

Attachment # 6
ADL No. 225561

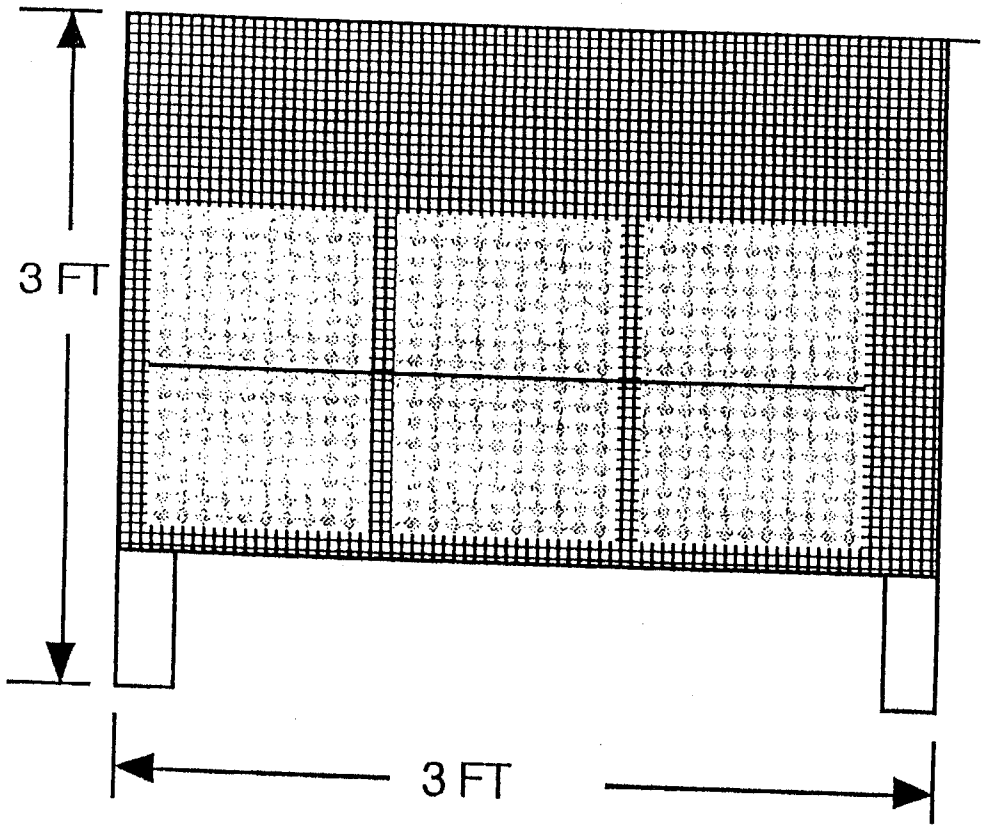
SSF-ATTACHMENT #5-A



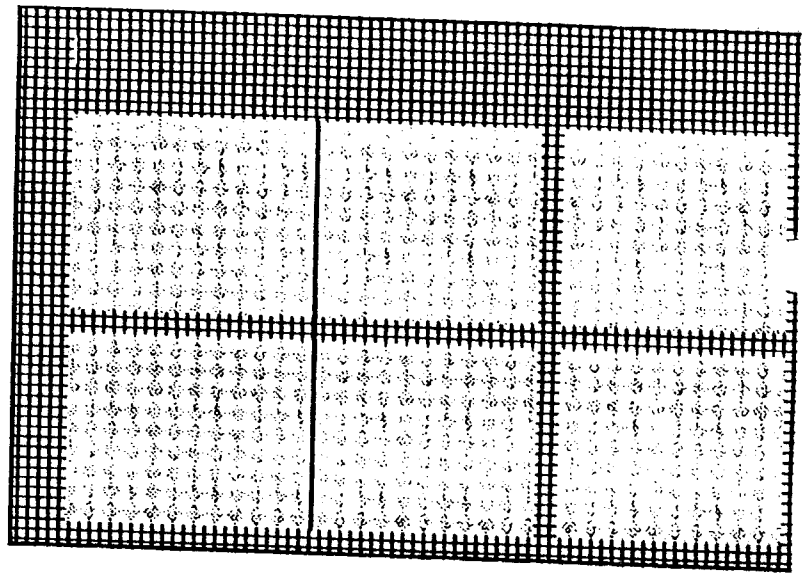
Attachment # 7
ADL No. 225561

SSF-HARDENING RACK MODIFICATION

SIDE VIEW



TOP VIEW



COMMENTS:

1)GALVINIZED STEELCONSTRUCTION
2)TOTAL OF 3 RACKS
3)EACH RACK WILL HOLD 200 DOZEN OYSTERS
4) EACH RACK WILL HOLD 18 CRATES
5) 3' X 3' X 3'

Attachment # 8
ADL No. 225561

SSF-ATTACHMENT #7
SEIMS SEA FARMS ADL-225561

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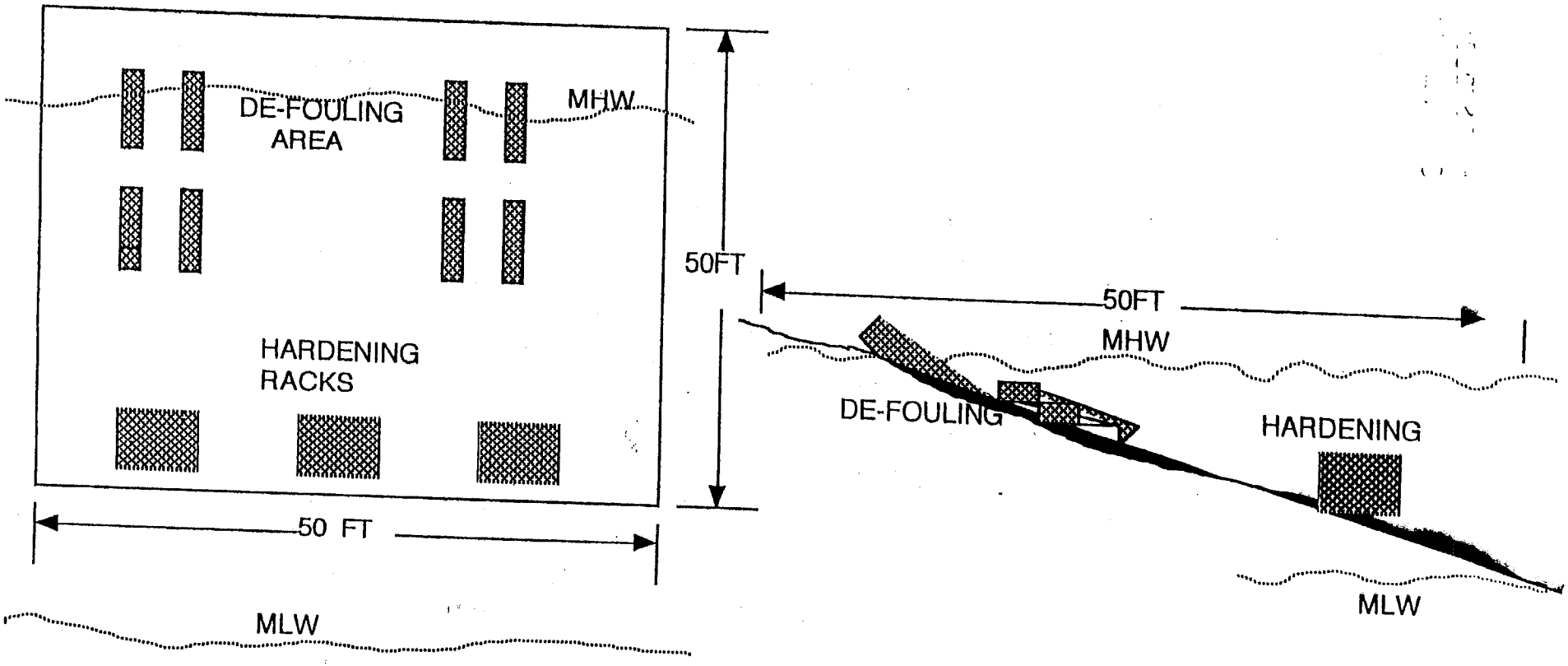
HARDENING / DE-FOULING AREA
PROPOSED



Attachment # 9
ADL No. 225561

SSF- ATTACHMENT # 7-A
ADL-225561

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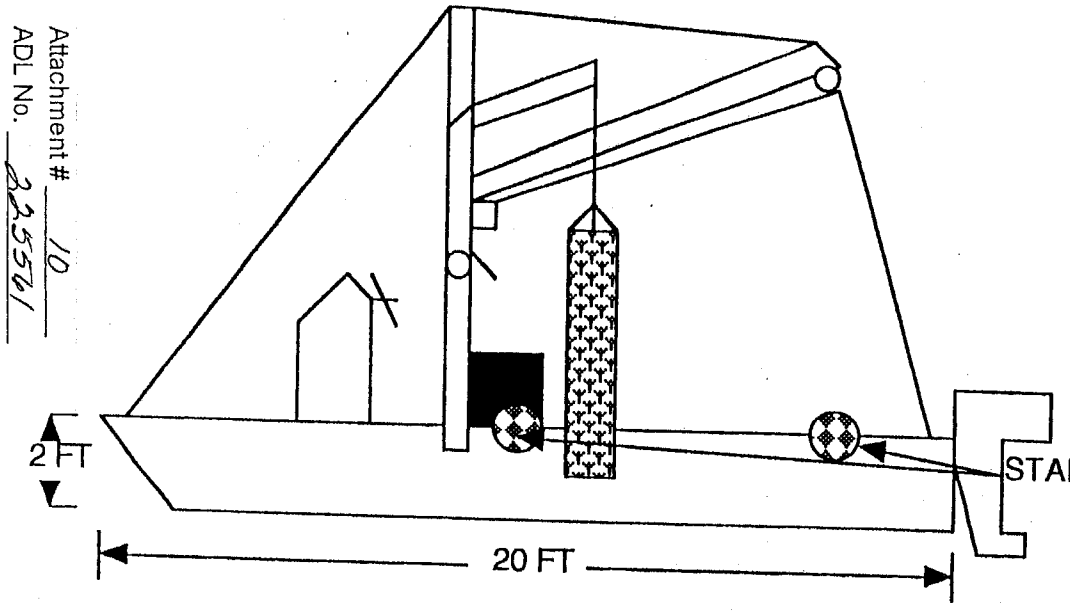
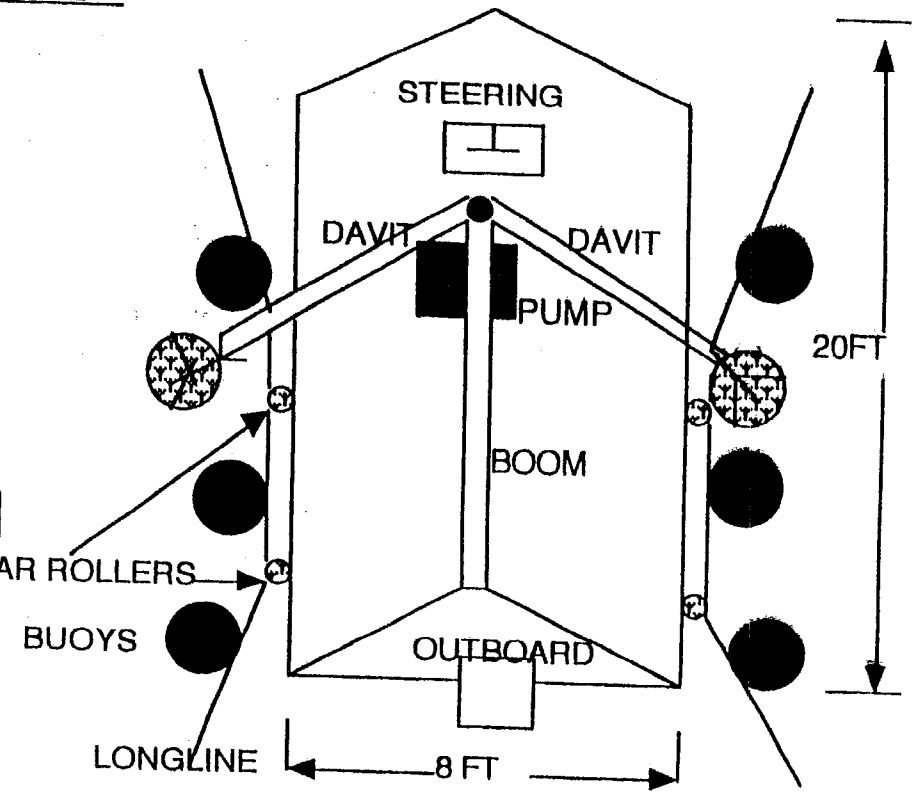
HARVESTING VESSEL "HARVEY"

Attachment # 10
ADL No. 225561





1) 8' X 20' FIBERGLASS VESSEL

2) POWERED BY 40 HORSEPOWER OUTBOARD WITH STEERING STATION.

3) EQUIPPED WITH : 2- DAVITS W/ HAND WINCHES, 1- BOOM, 1- 2.5 in. DE-FOULING / WASHDOWN PUMP, AND 4- STAR ROLLERS.

SSF-- ATTACHMENT #8
ADL--225561

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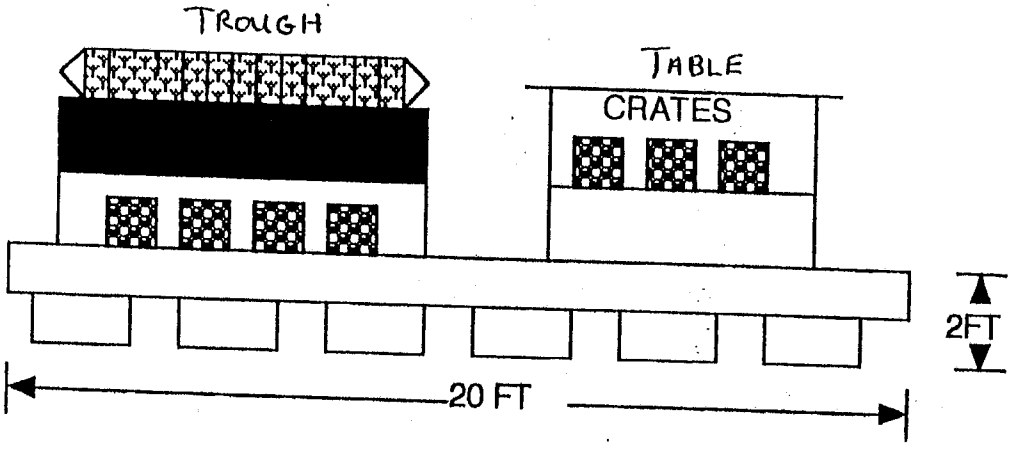
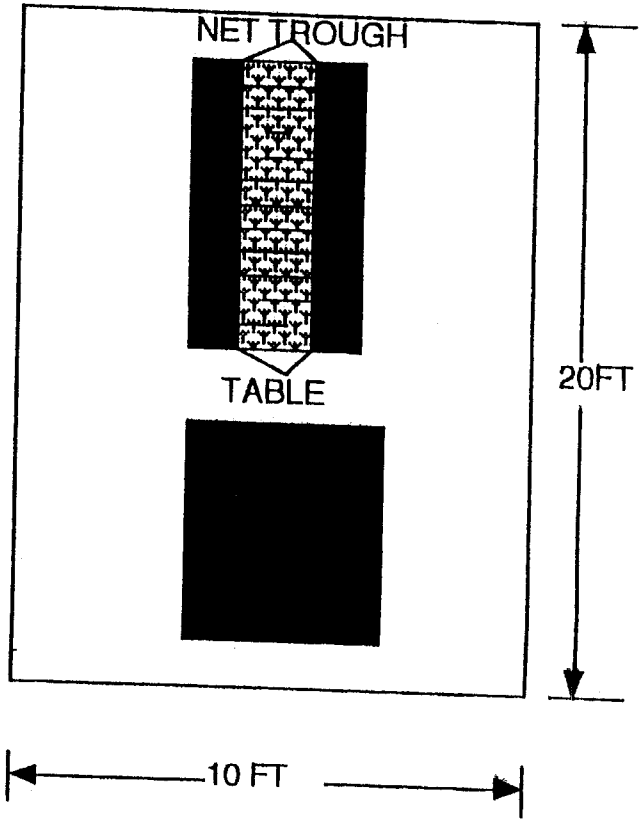
WORK RAFT





1) 10' X 20' WORK RAFT FOR HARVESTING OYSTERS AND MUSSELS.
2) CONSTRUCTION MATERIALS: ROUGH -CUT LUMBER AND STYRA- FOAM LOGS.
3) RAFT HAS SORTING TABLE AND NET DUMPING TROUGH.

Attachment # 11
ADL No. 225561

SSF-ATTACHMENT # 9
ADL-225561